

JEFFERSON COUNTY COMMISSIONERS
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TOM LYTHGOE, CHAIR

KEN WEBER

DAVE KIRSCH

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
April 7, 2009**

Present: Commissioners Lythgoe and Kirsch; Harold Stepper and Mike Hoffman, County Planners; Dennis Owens, Special Deputy County Attorney; Kellie Doherty, Personnel Officer; Joe Carter, Road Supervisor; Melissa Morris, GIS Mapping Tech; Bob Marks, Stacy Bellamy, Bill Gruber, Joe Schmaus

Absent: Commissioner Weber

CALENDAR REVIEW

- 4/08 North end Business Roundtable – noon
- 4/09 Tri-Co Fire – Helena – 9:00
Area IV on Aging – Townsend – 9:00
Elkhorn Working Group – 3:00
- 4/13 Meeting to discuss proposed fire regulations – 8:30
- 4/14 Meeting with Fred Bell regarding Elkhorn Cemetery – 9:00

COMMISSION REPORTS

MEETING REGARDING FIRE REGULATIONS

Commissioner Lythgoe reported on a meeting Tuesday evening with the fire chiefs and Bruce Suenram, Fire Warden, to discuss proposed fire regulations. The process is flawed, and someone is working on that. The Commission will be meeting with staff to develop a statement to back to the Fire Chiefs and Bruce will be contacting Red Lodge to get a copy of what they have done.

ZONING COMMISSION

Commissioner Lythgoe reported that there was an all-day Zoning Commission meeting on Thursday. They have gone through all of the regulations, and Harold and Bruce are in the process of finalizing what they have come up with.

ASH GROVE

Commissioner Lythgoe reported that he attended a meeting in the Governor's office regarding the
April 7, 2009 minutes.wpd

perceived problem with tourmalite at Ash Grove. Results are starting to come in from the various testing that has been done. The overall bottom line message is that there is some evidence of asbestos, but it is at such a low level that it is not a problem. In the meeting at the Governor's office, Mr. Oppen said that from all indications at this point, there will not be a problem and Ash Grove will be able to continue with their operations. They are planning to have a public hearing after all of the test results are in.

MACRS CONFERENCE

Commissioner Kirsch reported that he attended the MACRS meeting in Great Falls. He stated that it was very informative, and that he learned a lot.

SUBDIVISION REVIEW

PRELIMINARY PLAT REVIEW – MILLIGAN CANYON EMERGENCY SERVICES MINOR

Harold Stepper, County Planner, presented his staff report on this single lot subdivision located seven miles west of Three Forks. The tract of land contains over 160 acres and is proposed to be split into two lots ranging in size from 1.25 acres to over 160 acres. The purpose of the subdivision is to subdivide a site for the construction of an emergency services building from the land owned by Heritage West, LLC. Harold recommended that preliminary plat be granted.

Commissioner Lythgoe asked Harold to explain the purpose of this subdivision. Harold stated that when the Milligan Canyon Estates subdivision was done a couple years ago, one of the conditions was that emergency services be made available. An emergency services building will be built on the site. Currently, emergency services need to come out of Willow Creek, and have to cross a bridge that will not hold a full water truck.

Commissioner Lythgoe moved to give preliminary plat approval to the Milligan Canyon Emergency Services subdivision. Commissioner Kirsch seconded. The motion carried.

REQUEST FOR EXTENSION OF PRELIMINARY PLAT APPROVAL FOR VALLEY VIEW MINOR - WHITEHALL

Mike Hoffman, County Planner, presented the Commission with a request for extension of preliminary plat approval and presented his staff report on this five lot minor subdivision located in the Whitehall area. Mike recommended that a one-year extension be granted.

Commissioner Kirsch moved to grant a one year extension to the Valley View Minor subdivision. Commissioner Lythgoe seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

RESOLUTION 14-2009 AUTHORIZATION FOR SUBMITTAL FOR A DNRC RENEWABLE RESOURCE PLANNING GRANT FOR ASSISTANCE TO COMPLETE A PRELIMINARY

ENGINEERING REPORT FOR WASTEWATER SYSTEM IMPROVEMENTS FOR THE
TOWN OF CLANCY

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 14-2009

**AUTHORIZATION FOR SUBMITTAL FOR A DNRC RENEWABLE RESOURCE
PLANNING GRANT FOR ASSISTANCE TO COMPLETE A PRELIMINARY
ENGINEERING REPORT FOR WASTEWATER SYSTEM IMPROVEMENTS FOR THE
TOWN OF CLANCY**

WHEREAS, the Jefferson County Commissioner is applying to the Department of Natural Resources and Conservation (DNRC) Renewable Resource Grant and Loan Program (RRGL) for financial assistance to complete a Preliminary Engineering Report for wastewater system improvements for the Town of Clancy; and

WHEREAS, the preliminary engineering report budget is estimated at \$45,000; and

WHEREAS, the Jefferson County Commissioner authorized submittal for a Department of Natural Resources and Conservation Renewable Resource Grant and Loan Program Planning Grant in the amount of \$15,000; and

WHEREAS, the Jefferson County Commission agrees to comply with all State laws and regulations, and the requirements described in the DNRC Application Guidelines;

NOW, THEREFORE, BE IT RESOLVED that the Jefferson County Commission commits to provide the amount of matching funds as proposed in the DNRC application.

BE IT FURTHER RESOLVED that Tom Lythgoe, Jefferson County Commission Chair, is authorized to submit this application to the Montana Department of Natural Resources and Conservation, on behalf of Jefferson County, to act on its behalf and to provide such additional information as may be required.

DATED this 7th day of April, 2009.

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER

Commissioner Kirsch moved to adopt the resolution. Commissioner Lythgoe seconded. The motion carried.

RESOLUTION 15-2009 AUTHORIZATION FOR SUBMITTAL FOR A DNRC RENEWABLE RESOURCE PLANNING GRANT FOR ASSISTANCE TO COMPLETE A PRELIMINARY ENGINEERING REPORT FOR WASTEWATER SYSTEM IMPROVEMENTS FOR THE JEFFERSON HILLS/MONTANA CITY COMMERCIAL DISTRICT

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 15-2009

AUTHORIZATION FOR SUBMITTAL FOR A DNRC RENEWABLE RESOURCE PLANNING GRANT FOR ASSISTANCE TO COMPLETE A PRELIMINARY ENGINEERING REPORT FOR WASTEWATER SYSTEM IMPROVEMENTS FOR THE JEFFERSON HILLS/MONTANA CITY COMMERCIAL DISTRICT

WHEREAS, the Jefferson County Commissioner is applying to the Department of Natural Resources and Conservation (DNRC) Renewable Resource Grant and Loan Program (RRGL) for financial assistance to complete a Preliminary Engineering Report for wastewater system improvements for the Jefferson Hills/Montana City Commercial District; and

WHEREAS, the preliminary engineering report budget is estimated at \$45,000; and

WHEREAS, the Jefferson County Commissioner authorized submittal for a Department of Natural Resources and Conservation Renewable Resource Grant and Loan Program Planning Grant in the amount of \$15,000; and

WHEREAS, the Jefferson County Commission agrees to comply with all State laws and regulations, and the requirements described in the DNRC Application Guidelines; and

WHEREAS, the Jefferson County Commission has committed \$20,000 in matching funds toward the completion of the PER.

NOW, THEREFORE, BE IT RESOLVED that Tom Lythgoe, Jefferson County Commission Chair, is authorized to submit this application to the Montana Department of Natural Resources and Conservation, on behalf of Jefferson County, to act on its behalf and to provide

such additional information as may be required.

DATED this 7th day of April, 2009.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER

Commissioner Kirsch moved to adopt the resolution. Commissioner Lythgoe seconded. The motion carried.

JOE SCHMAUS – DISCUSS ISSUES RAISED BY JEFFERSON COUNTY PLANNING DEPARTMENT IN DECEMBER 1, 2008 LETTER TO JOHN W. FRAZIER REGARDING SHEEP MOUNTAIN 1, 2, 3 AND 4 SUBDIVISIONS

Joe Schmaus stated that Mr. Frazier directed him to write the Commission a letter regarding the letter sent to them by the Planning Department in December that outlined their concerns. He stated that the BLM is telling them one thing and the County is telling them something else, so they are up there running around in circles.

Commissioner Lythgoe asked Joe if he is talking about the four items listed in the letter to the County Attorney. Joe said that unbeknownst to he and Mr. Frazier, the County hired Great West Engineering to come in and look at the road. As he discussed in the letter, it is a no-brainer that they found some problems, as they are not completed with construction yet. There are certain areas that were found to be at precisely 13 percent. It is there position that they are talking about one-tenth of one percent of grade at the very least. He has talked to several engineers, and the variance is for 12 percent plus or minus, but the question is what that means. It means different things to different people, but the question is, ultimately, what it means to the Commissioners. He feels that they are really splitting hairs at twelve percent plus or minus to thirteen percent.

Commissioner Lythgoe said that he asked Joe Carter and Mike Hoffman to go up and look at the road. He knows that Dennis has been working on this also. He has also gotten a call from the Fire Department with their concerns. He asked Dennis for his opinion.

Dennis stated that in the context of this matter, he really doesn't have an opinion. He hasn't had time to do any research. The main questions seem to come at the end of the letter, but he is not competent to address these from an engineering standpoint. He is not sure what relevance the legal questions have at this time. Commissioner Lythgoe stated that probably Harold and/or Joe Carter could address these questions.

Harold stated concerning legal authority, under the easement of right-of-way grant from BLM, item I states that the holder shall obtain the services of a licensed engineer to locate, survey, design and oversee the construction of the proposed road. The road needs to be built to Jefferson County road standards. Harold noted that the easement document was signed by Mr. Frazier. Commissioner Lythgoe said that as far as the County having authority over a BLM road, according to the document the road is to be built to Jefferson County standards, so we have authority over how the road is build.

Commissioner Lythgoe noted that the next question is if Jefferson County has legal authority over a private road. Harold stated that this is not an issue in this case, as it has already been determined that the road must be built to county standards. Commissioner Lythgoe noted that the road will become a public road upon completion.

Dennis stated that from a legal standpoint, there is no legal relevance at this point. An agreement was entered into with the BLM that a road would be built to Jefferson County standards. Rendering legal opinions at this time doesn't seem to serve a purpose here, although he can understand the concern with what, if anything, can be done at this time.

Joe Schmaus said that the reason for the questions is truly because they are up there and the BLM is telling them one thing and the County is telling them something different. They will build the road to county standards; they are almost there at this point. If they are going to finish this project, they just need some direction.

Joe Carter, Road Supervisor said that maybe he can help on some clarification. At the time they met with BLM, it was before a lot of ground was broken. As the project went on and they saw where the road was going to lie, it gave a whole different picture. They are not trying to shut them down, but need to make sure that the road is built correctly and if they see a problem letting the developer know before it goes too far.

Joe Carter said that he would like to talk about the "plus or minus" on tolerance on the percent of grade and noted that the letter states that the plus or minus means one-tenth of a percent. So if the county is saying that a 12% grade is required, that would be 12.1%, but going all the way to 13 percent is a full percent. There is a big difference between 12 and 13 percent, and no so much between 12.1 or 12.2 percent. He would also like to talk about the material that was laid out in the windrow last fall. It is a good sub-grade material, but it doesn't meet surface specifications. He was requested to go up and look at it the previous evening. He and Ray Barnicoat went up and looked at in and both determined that it would make a good base material, but is not a surface material. He noted that a variance was granted to allow for use of 1.5 inch gravel on grades of 8% or greater, but the rest needs to meet county standards of $\frac{3}{4}$ surface course. There were some soft spots in the road, but that is typical for this time of year and he isn't concerned with this. Also, some of the culverts will need some work as well as some other maintenance issues.

Commissioner Lythgoe called Mike to the podium and said that both Joe and Mike went up and looked at the roads and agreed that what is currently on the road is holding up well as a base material. He was told that there isn't enough base material on there. Joe Carter said that there

needs to be twice as much as is currently on there. Mike stated that they have pointed out some deficiencies in the letter, but the phone works and the office door is open if Joe Schmaus or his engineers want to come and discuss these issues and work things out they are more than willing to do so.

Joe Schmaus said regarding Joe Carter's comments on the material, the road standards require that they get materials tested. They hired a geotechnical engineer to test the gravel, and it was certified an excellent alternative to the $\frac{3}{4}$ -inch minus; that was the purpose of Mr. Frazier requesting the variance. He means no offense to Mr. Carter, but it doesn't matter if he likes the material or not, he is not an engineer. An engineer did certify that the material that they are using is an acceptable alternative. Joe Carter was notified two to three weeks before they start that they are going to be using this material, and they heard nothing. It wasn't until after they started working with the material that they heard that Joe didn't like it. He doesn't want to be argumentative or make anyone angry, but they are trying to get the project done. They have \$20,000 worth of gravel on the road; if someone had a problem with what they were going to use it should have come right after they got the letter from the engineer.

Mike stated that they have the drawings for the off site, but they aren't stamped, so they have no idea that the base course actually meets any of the standards or variance. He would like to hear from an engineer that the base course is acceptable.

Joe Schmaus stated that all of the road base throughout the project was certified on August 11, 2008 to pass and meet compaction standards of the county. He feels that they are splitting hairs on the grade. The engineers gave them a print and they are building the road to that print. He wholeheartedly disagrees with Mike's assessment of the "plus or minus" meaning one-tenth of one percent. He thinks it means a lot more than that, at the very least to 12.9 percent. They need to get together and meet. Commissioner Lythgoe stated that he agrees that there has to be some sit-down conversation, but common sense says to him that "plus or minus" would maybe take it to 12.5 percent, but not to 12.9 percent. Joe noted that if they are at 12.5 percent they are talking about four-tenths of a percent and where is the tolerance; there is no tolerance. Commissioner Lythgoe said that he is guessing that the road standard doesn't speak to what "plus or minus" means.

Mike stated that the document addresses compaction, but not grade. It can be compacted, but if the grade is 15%, that is not within the tolerance of the regulations or the variance. Joe Schmaus stated that he can see where Mike is coming from, but the way that the process has been explained to him is that once the project was finished, the engineer would then come and certify the grades and that the road meets the standards. That comes at the end of the project, not during the middle.

Harold said that he thinks what Mike was referring to is that we have stamped, engineered plans for within the subdivision, but not off-site, on the BLM ground, and that is what we need. We need a plan of how that road is going to be built. Joe Schmaus said that all of the documents were turned in to the BLM, so he is assuming that they have them. He has put a call in to DBEK for them to send a full set of all of their reports in.

Joe Carter stated that on the report from Pioneer, if you notice it was addressed to Mr. Schmaus and there was no cc to Jefferson County. He wasn't aware of this until today. As far as the engineered drawings, we have the stamped for within the subdivision, but not for the BLM roads.

Commissioner Lythgoe stated that it has to be confusing for Joe Schmaus hearing from both BLM and the County. His thinking is that once the BLM delegated authority to the County, they no longer need to be involved with the project.

Harold stated that this makes all the sense in the world. He noted that he has a letter from Rick Hotaling of BLM that basically they have separated themselves from this once they signed off on the road agreement.

Joe Schmaus responded that if this is the position of the County, this is great. He is hoping that someone will inform the BLM of this. Commissioner Lythgoe said that we need to straighten this out.

Harold asked Joe the date on the letter from BLM. Joe said that it was probably in September. Commissioner Lythgoe said that they need to clarify this with BLM. Joe Schmaus needs to be dealing with one agency or the other, and they have already delegated authority to us.

Dennis suggested that someone from the County take the initiative to contact the BLM about this. Jefferson County was not a party to the agreement between the BLM and the developers. They said to build it to Jefferson County standards, but he doesn't see any delegation of authority.

Bob Marks stated that he has watched the progress of this and has also seen where another development went in close to his property that was required to build the roads to County road standards. It seems to him that the County needs to be consistent with the standards across the board with these subdivisions. The other issue he has is all of the dead trees in the area, which are a fire hazard. It is his understanding that the fire department has informed the Commissioners that with the road grades in the subdivision, they cannot guarantee fire protect in that area. He hopes that the County can be consistent with the road standards with these developers. Commissioner Lythgoe stated that the Commission is trying to do just that. Joe Schmaus has indicated that his engineers are saying that this material is adequate for a finish surface, but he is not sure that it meets our road standards. This is one area of discussion that we will probably have a problem with.

Joe Schmaus said that they aren't asking for another variance; they were already awarded a variance for use of that material. As expressed by the Planning Department, every development is a bit different. Regarding the fires the previous summer, the fire department responded in record time, due to the improved roads that they are constructing. Commissioner Lythgoe stated that there is no question that access to that area has been much improved for fire protection in the summertime. Wintertime, it will be extremely difficult, and they all know that. Commissioner Lythgoe said that one concern that the fire department had when they looked at it were the culverts. They didn't feel that they were long enough. This may be something to look at.

Commissioner Kirsch said that he got a report from Great West concerning grades on the road. The development was granted a variance for grades up to 12%. Great West noted that there are grades up to 15.5%. He also works with the fire departments, and there are concerns with the grades of the roads, particularly in the winter. He doesn't feel that people will be able to get fire insurance, because the fire departments won't go up there in the winter. Joe Schmaus said that this is not what the Clancy Fire Chief indicated to him last year. For Commissioner Kirsch to imply that they won't be able to get fire insurance, he doesn't have any idea what he is talking about and he is speaking out of place. He noted that the Boulder hill was closed at times this winter. Regarding the higher grades, the roads aren't finished yet. Commissioner Kirsch asked Joe if he is saying that they will reach the 12% grade when the roads are all finished. Joe said absolutely; they have every intention to get the roads to the 12% grade. They are splitting hairs here; 12 percent plus-or-minus, there has to be tolerance and tolerance wasn't addressed in the requirements. Mike said that the tolerance is from 10% to 12%; the standard is 10%.

Joe Carter said that he appreciates Joe Schmaus letting them know that the roads are still a work in progress. However, they are laying the base course down, so that would be an indication that they are almost finished. Base needs to be gotten to grade before they start laying the base course.

Joe Schmaus said that it is the engineer's position is that the grades aren't 13%, but that they are 12%, plus or minus.

Commissioner Kirsch moved to adjourn. Commissioner Lythgoe seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

KEN WEBER, COMMISSIONER

DAVE KIRSCH, COMMISSIONER

